

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Northwest Dakota Cellular of North Dakota	)	
Limited Partnership; North Central RSA 2 of	)	
North Dakota Limited Partnership; North	)	
Dakota RSA No. 3 Limited Partnership;	)	
Badlands Cellular of North Dakota Limited	)	
Partnership; North Dakota 5 – Kidder Limited	)	
Partnership; and Bismarck MSA Limited	)	
Partnership	)	
	)	
Petition for waiver of Section 54.307	)	

To: The Commission

**REPLY COMMENTS OF NORTHWEST DAKOTA CELLULAR OF NORTH DAKOTA  
LIMITED PARTNERSHIP; NORTH CENTRAL RSA 2 OF NORTH DAKOTA  
LIMITED PARTNERSHIP; NORTH DAKOTA RSA NO. 3 LIMITED PARTNERSHIP;  
BADLANDS CELLULAR OF NORTH DAKOTA LIMITED PARTNERSHIP; NORTH  
DAKOTA 5 -- KIDDER LIMITED PARTNERSHIP; AND BISMARCK MSA LIMITED  
PARTNERSHIP**

Northwest Dakota Cellular of North Dakota Limited Partnership; North Central RSA 2 of North Dakota Limited Partnership; North Dakota RSA No. 3 Limited Partnership; Badlands Cellular of North Dakota Limited Partnership; North Dakota 5 – Kidder Limited Partnership; and Bismarck MSA Limited Partnership (collectively, the “Partnerships”) submit the following reply comments in support of their Petition for Waiver of Section 54.307 of the Federal Communications Commission’s (“Commission”) universal service rules, 47 C.F.R. § 54.307.<sup>1</sup>

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<sup>1</sup> *Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Northwest Dakota Cellular of North Dakota, LP, et al., Petition for Waiver of Section 54.307 of the Commission’s Rules* (filed July 29, 2005) (“*Petition*”).

The Partnerships' Petition seeks a limited waiver of the September 30, 2004 quarterly line count filing deadline set forth in 47 C.F.R. § 54.307(c)(2) to enable them to receive High Cost Loop support ("HCL"), Local Switching Support ("LSS"), Long Term Support ("LTS"), Interstate Common Line Support ("ICLS"), High Cost Model support ("HCM") and Interstate Access Support ("IAS") for the eligible subscriber lines reported on the carriers' line count reports due that day. As a result of unforeseeable third-party error, the Partnerships' September 30, 2004, line count reports were not filed with the Universal Service Administrative Company ("USAC") until 9:34 a.m. on October 1, 2004 – only a few working hours after the filing deadline. Consequently, USAC deemed the Partnerships ineligible to receive approximately \$2.9 million in high-cost universal service support during the 4<sup>th</sup> Quarter of 2004 and the 1<sup>st</sup> Quarter of 2005. Consistent with recent Commission precedent and prior directives, the Partnerships' third-party vendor, GVNW Consulting, Inc. ("GVNW"), has since implemented sufficient safeguards to ensure that the carriers' quarterly line count reports will be timely filed in the future.

The Partnerships' Petition is unopposed and will serve the public interest in making support available in rural and high cost areas. Accordingly, the Partnerships respectfully request that the Commission grant its Petition for limited waiver 47 C.F.R. § 54.307.

#### **I. THE COMMISSION'S RECENT DECISIONS SUPPORT THE PARTNERSHIPS' WAIVER REQUEST**

Since the filing of the Partnerships' Petition, the Commission has granted waivers of the filing deadlines to several similarly situated carriers. The Commission's decisions in those timely cases strongly support granting the Partnerships' requested relief in this proceeding.

**A. The Partnerships' September 30, 2004, Line Count Filings Were Delayed Solely by Third-Party Error**

In a very recent decision, the Commission waived filing deadlines for four carriers where “the primary causes of [the] carriers’ filing delays were unusual and unforeseeable occurrences attributable to third parties.”<sup>2</sup> The Commission found that the “carriers acted reasonably and in good faith in their attempts to ensure that their filings were received by the deadlines.”<sup>3</sup>

Like the four *Benton/Linn* petitioners, the Partnerships acted reasonably and in good faith to ensure the timely filing of their line count reports. The Partnerships hired an experienced third-party vendor, GVNW, to prepare and file the required line count data with USAC. The Partnerships then delivered the necessary data to the vendor well in advance of the filing deadline. Despite their best efforts, however, the Partnerships’ September 30, 2004, line count reports were delayed by unforeseeable third-party error over which the carriers had no control. Indeed, the Partnerships did not even learn of the delayed filing until their receipt of universal service support ceased in February 2005.<sup>4</sup>

Thus, just as a waiver was justified for the *Benton/Linn* petitioners whose filings were unforeseeably delayed due to actions of third parties, a waiver is justified in the Partnerships’ case as well.

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<sup>2</sup> See *Federal-State Joint Board on Universal Service, Benton/Linn Wireless, LLC, et al.*, CC Docket No. 96-45, *Order*, DA 05-3111, ¶¶ 13-20 (rel. Nov. 29, 2005) (“*Benton/Linn Order*”).

<sup>3</sup> *Id.* at ¶ 18.

<sup>4</sup> See *id.* at ¶ 16 (noting that petitioner Wapsi did not become aware that its filing was late until it was returned as undeliverable).

**B. Waiver Is Justified Where the Delay Was Brief, Did Not Affect Administration of the Fund, and the Carrier Has Taken Remedial Measures**

Grant of the Partnerships' waiver request also is consistent with recent Commission precedent granting waivers to petitioners whose line counts were filed only one or two days late, such that USAC's task of managing the fund was unaffected, and the carrier has taken remedial action to ensure future filings are timely. In such cases, the Commission also has specifically considered the impact of the loss of funding on the carrier. These cases, too, support grant of the Partnerships' petition.

The *Benton/Linn* decision also granted waivers to other petitioners not affected by third-party errors. Specifically, USAC received line count filings from Northeast Iowa and Benton/Linn one day late as a result of clerical errors on the part of the carrier.<sup>5</sup> Northeast Iowa's general manager was on vacation during the period immediately before and after the filing deadline, and Benton/Linn's filing was sealed in a box during an office move that coincided with the filing deadline.<sup>6</sup> Similarly, the Commission recently waived a line count filing deadline for Citizens Communication and Frontier Communications because a corporate reorganization and internal reassignment of responsibilities resulting in the petitioners' line count reports being filed two days late.<sup>7</sup>

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<sup>5</sup> *Id.* at ¶¶ 7-8.

<sup>6</sup> *Id.* at ¶¶ 7-8. Although the order groups these petitioners with others that misunderstood the precise deadlines, neither the order nor the underlying petitions state that Northeast Iowa or Benton/Linn missed the deadlines for this reason.

<sup>7</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Citizens Communications and Frontier Communications Petition for Waiver of Section 54.802(a) of the Commission's Rules*, DA 05-2829 (rel. Oct. 27, 2005) ("*Frontier Order*").

In all these cases, the filings were only one or two days late, and the Commission specifically noted that the brief delays did not impair the administration of the USF.<sup>8</sup> The Commission also noted that all of these petitioners had taken steps to ensure that they will not file late in the future.<sup>9</sup>

Like these petitioners, the Partnerships' filing delay was caused by an error and the delay was very brief – less than one business day. As a result, the late filing should have no impact on the administration of the fund. Further, like these petitioners, the Partnerships (and their consultant) have taken steps to ensure that future filings are timely. As a result of its error in this case, GVNW has improved the manner in which it reviews and processes carrier line count data so that it is not dependent on the presence of, or subject to the absence of, any one employee.<sup>10</sup> GVNW has also implemented procedures that result in earlier preparation and review of the quarterly reports and the assignment of multiple individuals with authority to execute and guarantee delivery of the quarterly line count filings to USAC in a timely manner.

In granting the petitioners' requested waivers in the *Frontier Order*, the Commission also emphasized that the petitioners' loss of \$9.6 million in support could cause substantial hardship in the rural and high-costs areas serviced by the companies, and that granting the waiver would facilitate the petitioners' continued provision of universal service in the affected service areas.<sup>11</sup> Here, the Partnerships estimate a loss of approximately \$2.9 million in high-cost universal service support during the 4<sup>th</sup> Quarter of 2004 and the 1<sup>st</sup> Quarter of 2005. This loss has

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<sup>8</sup> *Benton/Linn Order* at ¶ 12; *Frontier Order* at ¶ 9.

<sup>9</sup> *Benton/Linn Order* at ¶ 12; *Frontier Order* at ¶ 10.

<sup>10</sup> *See* Petition at 9-10; Exhibit 1 at 3.

<sup>11</sup> *Id.* at ¶¶ 7-10.

foreseeably affected the Partnerships' ability to expand and improve service within their respective designated service areas in North Dakota.

In the *Benton/Linn Order*, the Commission noted that, because USAC now allows email and facsimile filing of line counts, it "doubt[s] that circumstances as described by these petitioners will be considered special circumstances in the future."<sup>12</sup> The Partnerships agree that these more expeditious filing methods will help ensure all parties' timely filings in the future. The Partnerships note, however, that at least one of the *Benton/Linn* petitioners missed the same September 30, 2004 filing deadline that the Partnerships missed.<sup>13</sup> Thus, there is no basis to apply this prediction to the Partnerships' petition.

For all these reasons, there is good cause to grant the Partnership's requested relief and the Commission should do so without delay.

## **II. NO PARTY OPPOSES THE PARTNERSHIPS' PETITION**

On November 18, 2005, the Commission issued a Public Notice soliciting comment on a series of petitions seeking waiver of various administrative filing deadlines related to the universal service program, including the Partnerships' Petition.<sup>14</sup> Interested parties were invited to file comments on or before December 2, 2005, and reply comments on or before December 9, 2005.

In response to the Commission's Public Notice, no party filed comments specifically referencing the Partnerships' Petition. No party opposed it. Only one party, GVNW, filed initial

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<sup>12</sup> *Benton/Linn Order* at ¶¶ 12, 20.

<sup>13</sup> *Benton/Linn Order* at ¶ 9 (noting that petitioner NTT missed the Sept. 30, 2004 line count filing deadline).

<sup>14</sup> *Federal-State Joint Board on Universal Service*, CC Docket 96-45, *Wireline Competition Bureau Seeks Comment on Petitions Requesting Waiver of Various Filing* (continued on next page)

comments in response to the Public Notice. GVNW's comments urge the Commission to grant the requested waivers and advocate for the implementation of a streamlined process under which USAC would be empowered administratively to grant similar waiver requests in the future.<sup>15</sup> The absence of opposition militates in favor of granting the Petition. Accordingly, the Partnerships respectfully submit the Commission should grant their unopposed waiver request without delay.

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*Deadlines Related to the Universal Service Program*, DA-05-3000 (rel. Nov. 18, 2005) (“*Public Notice*”).

<sup>15</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Comments of GVNW Consulting, Inc.* (filed Dec. 2, 2005) (“*GVNW Comments*”). While GVNW's proposal certainly merits discussion, any modifications to the Commission's rules are best addressed in pending rulemaking proceedings. Indeed, as the Commission observed in the *Benton/Linn Order*, “filing deadlines are among the issues on which the Commission sought comment in the *USF Administration NPRM*.” *Benton/Linn Order* at n.67 (citing *Comprehensive Review of Universal Service Fund Management, Administration, and Oversight, et al.*, WC Docket Nos. 05-195 *et al.*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11308 (2005)).

## CONCLUSION

The Partnerships' waiver petition is consistent with Commission precedent, would serve the public interest, and should be granted without delay.

Respectfully submitted,

**NORTHWEST DAKOTA CELLULAR OF  
NORTH DAKOTA LIMITED PARTNERSHIP;  
NORTH CENTRAL RSA 2 OF NORTH  
DAKOTA LIMITED PARTNERSHIP; NORTH  
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LIMITED PARTNERSHIP**

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